



**Appendix D**  
**To the State of Texas Department of Information Resources**  
**Contract for Managed Services for Information Technology**  
**DIR-SDD-538**  
**Customer Agreement**

Agreement No \_\_\_\_\_  
(To be completed by CompuCom)

**CompuCom Systems, Inc.**

7171 Forest Lane  
Dallas, Texas 75230

Attn: Legal Department

Phone: 972.856.3600

Fax: 972.856.7438

**Customer Name:**

**Address:**

**City/State/  
Zip Code:**

**Attn:**

**Phone:**

**Fax:**

**CompuCom Authorized Signature:**

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Effective Date: \_\_\_\_\_

**Customer Authorized Signature:**

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Signature Date: \_\_\_\_\_

**This Customer Agreement**, (referred to as the "Agreement") is entered into as the above date, (the "Effective Date") by and between CompuCom Systems, Inc. ("**CompuCom**") and the above named Customer ("**Customer**") pursuant to DIR Master Agreement DIR-SDD-538.

**1. Purpose.** This Agreement, along with the DIR Master Agreement DIR-SDD-538 states the general terms and conditions under which CompuCom agrees (a) to perform certain information technology services for Customer (collectively, "Services"). "Services" are collectively referred to in this Agreement as "Ordered Items".

**2. Ordering Documents.**

(a) Services. Services ordered by Customer shall be described in a statement of work executed by the parties (the "SOW"), which shall incorporate by reference the terms and conditions of this Agreement and the DIR Master Agreement DIR-SDD-538. Each SOW shall constitute a separate and individual agreement. In the event of a conflict between the provisions of a particular SOW and the provisions of this Agreement and then the DIR Master Agreement DIR-SDD-538, the provisions of this Agreement shall prevail, unless the SOW expressly amends the terms of this Agreement or the DIR Master Agreement DIR-SDD-538 as to that provision. Any changes to an SOW must be in writing and signed by CompuCom and Customer.

(b) Purchase Orders. Any purchase order issued by Customer shall be deemed a convenient payment device only and any terms and conditions contained therein shall not be a part of this Agreement.

**3. Term of Agreement.** The term of this Agreement shall begin on the Effective Date and continue until terminated pursuant to

the Termination Clauses contained in DIR Master Agreement DIR-SDD-538. After termination of this Agreement, no further SOWs or purchase orders may be placed under this Agreement. However (a) any mutually executed SOWs shall continue until terminated or expired in accordance with the SOW; and (b) such SOWs purchase orders shall, through completion, remain subject to the terms of the DIR Master Agreement DIR-SDD-538 and this Agreement.

**4. Term and Termination of SOWs.** The term of an SOW shall commence on the date specified in the SOW, and shall continue for the period specified therein, unless earlier terminated as provided herein. Either party may, upon written notice, terminate an SOW if the other party (i) fails, after 15 days notice, to make a payment which is delinquent, (ii) fails to conduct business in the normal course, becomes insolvent, makes a general assignment for the benefit of creditors, suffers or permits the appointment of a receiver for its business or assets, or avails itself of or becomes subject to any proceeding under the Federal Bankruptcy Code or any other federal or state statute relating to insolvency or protection from creditors, or (iii) fails to cure any material breach of any of its other obligations, representations, warranties or covenants hereunder (including those in the applicable SOW) within 30 days after receipt of written notice specifying the basis for the breach.

**5. Charges and Payment.**

**Appendix D**  
**To the State of Texas Department of Information Resources**  
**Contract for Managed Services for Information Technology**  
**DIR-SDD-538**  
**Customer Agreement**

**Agreement No \_\_\_\_\_**  
*(To be completed by CompuCom)*

(a) Charges shall be set forth in the applicable SOW/purchase order. Customer agrees to comply with the Texas Prompt Pay Act.

(b) If Customer fails to pay or dispute a balance within the above time period, Customer shall pay, on demand, interest at the lesser of one and one half percent (1.5%) per month, or the highest rate allowed by law on such balance until paid. The assessment and acceptance, or any non-assessment, of any late charge shall not be construed as a waiver by CompuCom of its rights with respect to the default giving rise to such payment and shall not affect any of CompuCom's rights under this Agreement or its remedies at law. CompuCom reserves the right to adjust the amount of credit extended to Customer under this Agreement. CompuCom shall also retain all remedies for breach it may have against Customer, if at any time Customer becomes bankrupt or insolvent, makes an assignment for the benefit of creditors, goes out of business, or any proceeding, voluntary or involuntary, involving Customer is instituted under any bankruptcy or insolvency laws. Customer further agrees to pay to CompuCom any and all costs of collection, including reasonable attorney's fees and expenses, in the event that it becomes necessary for CompuCom to pursue any remedy.

(c) Customers purchasing services under this Agreement are tax-exempt and no taxes shall be invoiced pursuant to Master Agreement DIR-SDD-538.

**6. Limited Warranty and Disclaimer.**

(a) CompuCom warrants that Services under any SOW will be performed in a good and workmanlike manner.

(b) In addition to any warranty provided by the manufacturer, parts and materials which are furnished by CompuCom in conjunction with Services under an SOW will be free from defects in workmanship and material at the time of installation.

(c) If any failure to meet the foregoing warranty relative to Services, parts or materials appears within 15 days from the date such Services or material is furnished, CompuCom shall (i) re-perform the Services and/or repair or replace the defective parts or material without additional charge to Customer, or (ii) refund to Customer the amount paid for such Services or defective parts or material.

(d) THE FOREGOING SETS FORTH THE EXCLUSIVE REMEDIES AGAINST COMPUCOM FOR CLAIMS BASED ON A DEFECT IN SERVICES OR PARTS OR MATERIALS.

(e) Warranties for Product are described in the Products Addendum.

EXCEPT AS PROVIDED IN THIS SECTION 6 COMPUCOM MAKES NO WARRANTY, WHETHER WRITTEN, ORAL, STATUTORY, EXPRESS OR IMPLIED, AS TO ANY MATTER WHATSOEVER WITH RESPECT TO ORDERED ITEMS FURNISHED UNDER THIS AGREEMENT OR ANY SOW. ALL OTHER WARRANTIES ARE EXPRESSLY DISCLAIMED BY COMPUCOM, INCLUDING, BUT NOT LIMITED TO, ANY IMPLIED WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, OR AGAINST

CLAIMS OF PATENT INFRINGEMENT OR THE LIKE. SOME JURISDICTIONS DO NOT PERMIT THE EXCLUSION OF IMPLIED WARRANTIES, IN WHICH CASE THE EXCLUSION OF IMPLIED WARRANTIES MAY NOT APPLY.

**7. Indemnity.**

(a) To the extent allowed by Texas law and Constitution, each party shall indemnify, defend and hold harmless the other party from and against any loss, expense or claim asserted by third parties for damage to real or tangible personal property, or for bodily injury, or both, to the extent such damage or injury is attributable to the negligence or willful misconduct of the indemnitor; provided, the indemnitee gives the indemnitor prompt notice of any such claim and all necessary information and assistance so that the indemnitor, at its option, may defend or settle such claim, and the indemnitee does not take any adverse position in connection with such claim. In the case of Texas state agency, Customers, when CompuCom is the indemnitor, CompuCom agrees to coordinate defense and settlement matters with the Office of Texas Attorney General. In the event that any such damage or injury is caused by the joint or concurrent negligence of both parties, the loss, expense or claim shall be borne by each party in proportion to its negligence.

(b) CompuCom will defend, indemnify and hold harmless Customer against a claim that Customer's use of CompuCom developed deliverables included in the Services infringe or violate any existing United States patent, copyright or trade secret and will pay any resulting costs, damages and attorney's fees finally awarded, provided that (i) Customer notifies CompuCom promptly in writing of the claim; (ii) Customer cooperates fully and timely with CompuCom in the defense; and (iii) CompuCom has sole control of the defense and all related settlement negotiations. In the case of Texas state agency, Customers, when CompuCom is the indemnitor, CompuCom agrees to coordinate defense and settlement matters with the Office of Texas Attorney General. If the Services, or Customer's use of deliverables included in the Services, or any portion thereof, is enjoined, or in CompuCom's opinion is likely to be enjoined, CompuCom shall, at its sole option, either: (w) substitute a fully functionally equivalent non-infringing version of the affected portion(s) of the Services; (x) modify the infringing aspect of the Services so that it no longer infringes but remains a fully functionally equivalent item; (y) obtain for Customer, at CompuCom's expense, the right to continue to use the Services; or (z) if none of the foregoing is commercially feasible, then refund to Customer the fees paid by Customer for the affected Services. Notwithstanding the foregoing, CompuCom shall have no obligation, under this section or otherwise, to Customer with respect to any claim of infringement to the extent that it arises out of: (I) CompuCom following the designs, specifications or written instructions of Customer; (II) Customer's failure to obtain proper licenses for hardware, software or tools provided by Customer for use hereunder; (III) use of the Services in a manner not reasonably contemplated in the SOW; (IV) use of the Services in conjunction with hardware,

**Appendix D**  
**To the State of Texas Department of Information Resources**  
**Contract for Managed Services for Information Technology**  
**DIR-SDD-538**  
**Customer Agreement**

**Agreement No \_\_\_\_\_**  
*(To be completed by CompuCom)*

software, systems or methods not provided by CompuCom or specified in the SOW; or (V) purchase or use of ordered Products. THE RIGHTS PROVIDED IN THIS SECTION SHALL BE THE EXCLUSIVE REMEDY OF CUSTOMER FOR CLAIMS OF THE KIND DESCRIBED HEREIN.

**8. Data Rights.** Each party shall retain ownership of all its previously existing intellectual property rights. All intellectual property rights and other proprietary rights in and to the services and deliverables, information, know-how, and processes developed by CompuCom, or anyone acting on CompuCom's behalf, arising from the Services performed hereunder shall be the sole and exclusive property of CompuCom and shall not be claimed to be a work-for-hire. CompuCom grants Customer a non-exclusive worldwide right to use, reproduce, copy and display any deliverables as necessary in the conduct of Customer's own business. This license is perpetual, provided Customer is not otherwise in breach of this Agreement or the applicable SOW.

**9. Employees.** The parties are entering into this Agreement as independent contractors and neither has the authority to bind the other to any third party or otherwise to act in any way as the representative of the other. In particular, it is understood and agreed that neither party nor any employee or agent of such party is eligible to participate in or to exercise rights under any of the other party's profit sharing, group insurance, major medical or any other compensation or benefit plans. CompuCom shall be solely responsible for the payment of its employees' compensation, including employment taxes, workers' compensation and any similar taxes associated with employment of CompuCom personnel. Each party will not, during the term of any SOW and for 6 months thereafter, directly or indirectly solicit for employment or employ any person who is an employee of the other party or its subcontractors and assignees who has been involved in activities related to the Services under the applicable SOW or Purchase Order. This requirement will not apply for employees who respond to a general advertisement of employment.

**10. Limitation Of Liability.** COMPUCOM'S ENTIRE LIABILITY FOR ANY CLAIM ARISING FROM ORDERED ITEMS, REGARDLESS OF LEGAL THEORY, SHALL NOT EXCEED THE FEES PAID FOR THE 12 MONTHS PRIOR TO THE MONTH IN WHICH THE CLAIM AROSE UNDER THE SOW OR THE PRODUCT PURCHASE ORDER, WHICHEVER IS APPLICABLE; HOWEVER, THE FOREGOING LIMITATION OF LIABILITY SHALL NOT APPLY TO CLAIMS FOR PERSONAL INJURY OR DAMAGE TO REAL OR TANGIBLE PERSONAL PROPERTY CAUSED BY THE NEGLIGENCE OR WILLFUL MISCONDUCT OF COMPUCOM. IN NO EVENT SHALL EITHER PARTY BE RESPONSIBLE TO THE OTHER FOR INCIDENTAL, INDIRECT, PUNITIVE, EXEMPLARY OR CONSEQUENTIAL DAMAGES ARISING UNDER OR IN ANY

WAY CONNECTED WITH THIS AGREEMENT, EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

**11. Confidential Information.** To the extent consistent with Texas law, each party agrees not to disclose to employees without a need to know or to third parties, information received from the other party which has been identified as proprietary or confidential, or which by the nature of the circumstances surrounding disclosure, should in good faith be understood to be proprietary or confidential, including, without limitation, information regarding the other party's business, pricing, know-how, documentation, manuals, or other printed material (collectively, "Information"). Information shall not include any information which (i) was in the public domain prior to disclosure, (ii) comes into the public domain through no act or omission of the receiving party, (iii) is disclosed to a party without restriction by a third party who has a legal right to make such disclosure, or (iv) is disclosed pursuant to the Texas Public Information Act.

**12. General Provisions.**

(a) This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors, legal representatives, and assigns. However, Customer may not assign, delegate or otherwise transfer its obligations under this Agreement, except with the prior written consent of CompuCom, which consent shall not be unreasonably withheld.

(b) Force Majeure as stated in Appendix A, Section 8C to DIR-SDD-538 shall apply to any SOW.

(c) Customer shall execute proper data back-up and recovery procedures before and after any Services are rendered under any SOW in order to protect against any loss of data. Customer hereby releases CompuCom from any liability for loss of Customer's data.

(d) This Agreement shall be interpreted in accordance with the substantive law, but not the choice of law rules, of the State of Texas.

(e) No action under this Agreement may be brought by either party more than 4 years after the cause of such action becomes known to the party.

(f) If any provision of this Agreement is deemed, by a court of competent jurisdiction, to be invalid or unenforceable, such judgment shall not invalidate or render unenforceable the remainder of the Agreement.

(g) The DIR Master Agreement DIR-SDD-538 this Agreement, and any SOWs (including attachments thereto) constitute, in each case, the entire agreement between the parties with respect to the subject matter thereof, and supersedes all prior agreements, negotiations, requests for proposals or proposals or similar documents and any understandings with respect thereto, both written and oral.

(h) Any notice under this Agreement shall be in writing, addressed to the address on the first page of this Agreement (or such other address of which the other party is notified), and shall

**Appendix D**  
**To the State of Texas Department of Information Resources**  
**Contract for Managed Services for Information Technology**  
**DIR-SDD-538**  
**Customer Agreement**

**Agreement No** \_\_\_\_\_  
*(To be completed by CompuCom)*

be effective upon receipt via certified United States or international mail or nationally recognized courier.

(i) All changes to this Agreement or an SOW must be in writing and executed by authorized representatives of both parties.

(j) This Agreement and any resulting SOW may be executed by the parties in multiple counterparts, each of which

counterpart shall be deemed an original of equal force and effect.

(k) Dispute Resolution shall be conducted as set forth in the DIR Master Agreement DIR-SDD-538, Article 8A.